place where refreshments, food, and drink are served. Whether they are served to guests seated at a table, or on stools at a counter, does not affect the definition; that being a mere detail in the operation of the restaurant.' State *v.* Shoaf (N. C.) 102 S. E. 705, and authorities cited. In the case cited the evidence showed that the premises were used for serving wieners, sandwiches, and the like to guests seating themselves on stools near a counter; there being no tables. In the present case the undisputed evidence shows that no seats were provided, at tables or otherwise. The mere matter of providing guests with seats cannot change the character of the place of business, which must be determined by the character of the business carried on; the essential and characteristic features of a restaurant unquestionably being the serving of food and drink. It is insisted by the defendant that the plaintiff gave him permission to conduct his wiener stand upon the leased premises. The contrary is alleged by the plaintiff, and it was within the discretion of the trial judge to find in favor of either on this point.

"Judgment affirmed."

Negligence; Unguarded Poisonous Pool Attractive to Children.—In United Zinc and Chemical Company *v.* Britt, 264 Fed. 785, the U. S. Circuit Court of Appeals for the Eighth Circuit held that where the inclosure around a tract of land formerly used for manufacturing purposes had fallen away, so that the public were free to go at will and had made footpaths across it, if a pool of water impregnated with poisonous chemicals was attractive to boyish instincts and impulses as a place to go in bathing, and boys yielding to such impulses were killed by the poisons, it was immaterial whether the boys saw or could see the pool before they entered upon the land.

The court said in part: "It is also urged as error that the weight of the evidence disclosed that the pool could not have been seen by one off the premises standing in the nearest highway, or on the boundary line, or in the paths, and that the court told the jury that it was immaterial whether the boys saw it before they went upon the tract or after they were on it. In this the court doubtless had in mind two things, first, the undisputed fact that the public passed over it at will, so much so as to beat foot-paths across it, the further fact of its nearness to the homes of families, and second, the principle of law applied in cases like this that children of tender years are not classed with idlers, licensees or trespassers. 2 Shearman & Redfield on Negligence, sec. 705. In Pekin *v.* McMahon, 154 Ill., 141, 39 N. E., 484, 27 L. R. A., 206, 45 Am. St. Rep., 114, it is said:

" 'Although a child of tender years, who meets with an injury upon the premises of a private owner, may be a technical trespasser, yet the owner may be liable, if the things causing the injury have

been left exposed and unguarded, and are of such a character as to be an attraction to the child, appealing to its childish curiosity and instincts. Unguarded premises, which are thus supplied with dangerous attractions, are regarded as holding out implied invitations to such children.'

"It is further urged that there is lack of proof of knowledge on the part of the owner that the tract was being used or visited by the public or by children, and that if the evidence shows such user or visitations they were wholly without invitation or consent; but on the facts adduced the law imputes both knowledge and consent. In N. P. Ry. Co. *v.* Curtz, 196 Fed., 367, 116 C. C. A., 403, it is said:

" 'The occupant or owner of premises who invites either expressly or impliedly, others to come upon them, owes to them the duty of using reasonable and ordinary diligence to the end that they be not necessarily or unreasonably exposed to danger; and an implied invitation to another to enter upon or occupy premises arises from the conduct of the parties, and from the owner's knowledge, actual or imputed, that the general use of his premises has given rise to the belief on the part of the users thereof that he consents thereto.'

"In short, an examination of the authorities, both State and Federal, fails to convince that the court erred in submitting the case or in the instructions given and refused. We think this conclusion is sustained by the opinion of the Supreme Court in Railway Co. *v.* McDonald, 152 U. S., 262, 14 Sup. Ct., 619, 38 L. Ed., 434, and by Railway Co. *v.* Curtz, supra; Lumber Co. *v.* Thompson, 215 Fed., 8, 131 C. C. A., 316, L. R. A., 1915A, 731; Chesko *v.* Delaware & Hudson Co., 218 Fed., 804, 134 C. C. A., 492; Snare & Triest Co. *v.* Friedman, 169 Fed., 1, 94 C. C. A., 369, 40 L. R. A. (N. S.), 367; also by the Supreme Court of Kansas in Roman *v.* Leavenworth, 90 Kan., 379, 133 Pac., 551, Id., 95 Kan., 513, 148 Pac., 746; Kansas City *v.* Siese, 71 Kan., 283, 80 Pac., 626; Light & Power Co. *v.* Healy, 65 Kan., 798, 70 Pac., 884."